EXXON COMPANY, U.S.A.
FOREST OIL CORPORATION
CONTINENTAL OIL COMPANY

IBLA 71-170, 71-171, 71-173 Decided May 14, 1974

Appeals from decisions of the Manager, Outer Continental Shelf Office, Bureau of Land Management, New Orleans, rejecting high bids for inadequacy of cash bonus offered.

Reversed in part; affirmed in part.

Oil and Gas Leases: Competitive Leases--Outer Continental Shelf Lands Act: Oil and Gas Leases

The provisions of the Outer Continental Shelf Lands Act, 67 Stat. 462, 43 U.S.C. §§ 1331 et seq. (1970), authorize the Secretary of the Interior to reject high bids for Outer Continental Shelf oil and gas leases based on the inadequacy of the bonus bid if such rejection has a reasonable basis in fact.

Delegation of Authority: Extent of--Outer Continental Shelf Lands Act: Oil and Gas Leases

The Board of Land Appeals has been delegated full authority by the Secretary of the Interior to review de novo decisions rendered by Departmental officials relating to the use and disposition of mineral resources in the submerged lands of the Outer Continental Shelf.

APPEARANCES: Robert M. Perry, Esq., Houston, Texas, John P. Everett, Esq., New Orleans, Louisiana, David R. Melincoff, Esq., and H. Robert Halper, Esq., of O'Connor, Green, Thomas, Watters & Kelly, Washington, D.C., for appellant Exxon Company, U.S.A.; Ross N. Sterling, Esq., of Vinson, Elkins, Searls, Connally & Smith, Houston, Texas,

and J. Cordell Moore, Esq., Washington, D.C., for appellant Forest Oil Corporation; William M. Meyers, Esq., Liskow & Lewis, New Orleans, Louisiana, for appellant Continental Oil Company; Peter B. Kelsey, Esq., Division of Public Lands, Office of the Solicitor, United States Department of the Interior, for the appellee.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Exxon Company, U.S.A. (the successor to Humble Oil & Refining Company), Forest Oil Corporation, and Continental Oil Company 1/ have appealed various decisions of the Manager, Outer Continental Shelf Office, Bureau of Land Management, New Orleans, dated December 17, 1970, rejecting their several high bids because of the "inadequacy of the cash bonus bid." The sale had been conducted on December 15, 1970, by sealed bidding pursuant t the provisions of the Outer Continental shelf Lands Act [OCSLA], Act of August 7, 1953, 67 Stat. 462, 43 U.S.C. § 1331 et seq. (1970). Appellants individually were the high bidders on four tracts for which the bids were rejected. 2/ In separate appeals they contend essentially first, that the Secretary of the Interior is without authority to reject the highest responsible qualified bid offer, absent a showing of fraud or collusion, and second, that even granting that such authority for the rejection of bids is reposed in the Secretary, the rejection of the bids in the instant cases was arbitrary or capricious.

This Board has, on a number of previous occasions, impliedly affirmed the power of the Secretary of reject bids for the inadequacy of the bonus offered. See e.g., Tipperary Land & Exploration Corp., 79 I.D. 596, 7 IBLA 270 (1972); Antoine "Fats" Domino, 7 IBLA 375 (1972); Kerr McGee Corp., 6 IBLA 108 (1972); Humble Oil & Refining Co., 4 IBLA 72 (1971). See also, Humble Oil & Refining Co., A-30906 (December 5, 1967); Pan American Petroleum Corp., A-29510 (August 13, 1963). Appellants agreed that both the published notice of the lease sale, 35 F.R. 16417-19 (October 21, 1970), and the applicable regulation, 43 CFR 3302.5, clearly stated that "the

1/ Continental's appeal is for itself and for its bidding partners, Getty Oil Company and Cities Service Oil Company. (Hereinafter "Conoco.")

2/ Humble Oil & Refining Company bid $511,100 for Tract No. 2220, OCS No. G2112, S/2 of Block 315, Eugene Island Area South Addition. Continental Oil Company, together with Getty Oil Company and Cities Service Oil Company bid $805,101 for Tract No. 2214, OCS No. G2106, Block 297, Eugene Island Area, South Addition. Forest Oil Corporation bid $1,530,000 for Tract No. 2181, OCS No. G2073, Block 177, Vermillion Area, and $1,030,000 for Tract No. 2194, OCS No. G2086, Block 310, Vermillion Area, South Addition.

United States reserves the right and discretion to reject any and all bids received for any tract regardless of the amount offered." Appellants contended, however, that the Board's decisions had assumed that the Secretary was possessed of such authority without really analyzing the basis for such an assumption. Furthermore, they argued that the regulations, being beyond the purview of the statute, could be given no force or effect.

The Solicitor of the Department of the Interior, representing the Bureau of Land Management, argued at length that both the clear wording of the statute, couched as it was in verbiage of discretion, as well as the legislative history of OCSLA conclusively showed that the Secretary of the Interior was authorized to reject any bids that he thought represented an inadequate return to the Government. Furthermore, he contended that the jurisdiction of the Board of Land Appeals in reviewing the decision of the OCS Manager was limited to a scrutiny of the record to determine whether the decision of the Manager was "consistent with existing policies, regulations and procedures of the Department. It does not have jurisdiction to review the Manager's decisions de novo." (Appellee's Answer at 1-2.) Finally, the Solicitor argued that since the Manager's action could not be said to be arbitrary or capricious, his rejection of the bid offers should be affirmed.

Appellants requested an opportunity to present oral argument to the Board. Since both the appellants' and the Government's briefs raised questions concerning the criteria utilized by the Manager in rejecting the bids, the Board, by order of April 16, 1973, granted the request. Oral argument was had on September 11, 1973, at which time all parties participated.

The first issue for determination is whether or not the Secretary has the authority to reject bids after he has decided to offer them for bidding. The statute declares, in relevant part, that:

> [T]he Secretary is authorized to grant to the highest responsible qualified bidder by competitive bidding under regulations promulgated in advance, oil and gas leases on submerged lands of the Outer Continental Shelf * * *. The bidding shall be (1) by sealed bids, and (2) at the discretion of the Secretary, on the basis of a cash bonus with a royalty fixed by the Secretary at not less than 12 1/2 per centum in amount or value of the production saved, removed or sold, or on the basis of royalty, but at not less than the per centum above mentioned, with a cash bonus fixed by the Secretary. 43 U.S.C. § 1337 (1970).

Appellants contend, in effect, that when the Secretary has determined it to be in the public interest to solicit bids on various tracts lying within the Outer Continental Shelf, he has exhausted his discretion within the terms of the statute and retains merely the ministerial duty to complete the sale to the highest qualified responsible bidder. For the reasons stated infra, we disagree and reject this contention.

At the outset it should be noted that the provisions of the statute are not couched in mandatory language. It declares that "The Secretary is authorized" not that "The Secretary shall" or that "The Secretary is authorized and directed." It is a grant of general power, not an order to act.

The Department has long held that it has the authority not to issue leases that it considers not to be in the public interest. In Richard K. Todd, 68 I.D. 291 (1961), aff'd sub nom. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), the Department noted that "[s]tripped of all authority to withdraw lands the Secretary would still have his discretionary authority to refuse to issue leases where he thinks issuance would not be in the public interest." In both Humble Oil & Refining Co., 4 IBLA 72 (1971) and Kerr McGee Corp., supra, this Board affirmed rejection of bids for leases on Outer Continental Shelf Lands which were deemed to be inadequate. While it may be that these decisions did not specifically take cognizance of the contentions here pressed, implicit in the action taken was an assumption of the validity of the regulations. See especially Kerr McGee Corp., supra at 112.

The statutory comparisons advanced by appellants are not persuasive. The fact that the statutes cited contain specific provisos providing for the rejection of all bids must be coupled with the realization that the language used in those sections is in mandatory terms. Thus, 40 U.S.C. § 484(c) provides "Award shall be made * * *"; 10 U.S.C. § 2305 provides "* * * awards shall be made * * *"; 30 U.S.C. § 184(h)(2) provides "* * * the underlying lease * * * shall be sold by the Secretary * * *." (Emphasis supplied.) As we have noted above, however, there is no such mandatory language in 43 U.S.C. § 1337(a).

Nor does the legislative history of OCSLA support appellants' position. As the brief for the Solicitor cogently pointed out, the act which emerged from Congress and which was approved by the President on August 7, 1953, represented a victory for those forces in Congress that desired to vest some quantum of discretion in the Secretary of the Interior. While the bill which was enacted, S. 1901, 83d Cong., 1st Sess. (1953), simply declared that the Secretary was authorized to grant leases, H.R. 5134, 83d Cong., 1st Sess.

(1953), explicitly provided for the bifurcated approach which appellants contend resulted from S. 1901. Thus, sec. 10 of H.R. 5134, supra, provided that:

> When in the Secretary's opinion there is a demand for the purchase of such leases, the Secretary may in his discretion offer for sale, on competitive sealed bidding, oil and gas leases on any area of the outer continental shelf. Subject to the other terms and provisions hereof, sales of leases shall be made to the responsible and qualified bidder bidding the highest cash bonus per leasing unit. (Emphasis added.)

Had Congress intended to limit the Secretary's discretion as appellants contend, it is likely that it would have adopted the approach advanced in H.R. 5134, supra. While the fact that Congress did not explicitly spell out such an approach is not conclusive on the issue of Congressional intent, realization that language which would have clearly provided for the result contended was under contemporaneous consideration and was not adopted is certainly probative of the conclusion that Congress did not wish to mandate such a result.

Similarly we find no support for appellants' contentions that various court decisions interpreting other sections of the mineral leasing laws indicate that the Secretary is without the power to reject all bids under OCSLA. We think that the appellants mistake the essential thrust of these cases. They stand for the proposition that if the Secretary attempts to lease lands he must follow the statutory preference and has no authority to grant a lease in violation thereof. See, e.g., Pease v. Udall, 332 F.2d 62, 63-64, (9th Cir. 1964):

> Appellant protests that the Department has by its decision to solicit bids for the sale of leases, determined that these lands were to be leased. * * *
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> In our judgment the Secretary has the discretion not to lease at all under the act * * * if was felt that such leasing would be detrimental to the public interest.

Accord, Duesing v. Udall, 350 F.2d 748, 750 (D.C. Cir. 1965), Southwestern Petroleum Corp. v. Udall, 361 F.2d 650, 654 (10th Cir. 1966).

The two cases in which courts have ordered the Secretary to issue a lease differ markedly from the factual construct before us. In McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955), the Secretary issued an oil and gas lease to one Culbertson pursuant to a simultaneous drawing even though it had been discovered, after the drawing, that Culbertson had violated regulations regarding the sole party in interest requirements. The Secretary admitted that had he been advertent to the violations prior to the drawing he would have rejected the lease offer, but he refused to cancel the lease issued after the drawing had been completed. The court ordered the cancellation of the Culbertson lease and issued a mandamus directing the Secretary to issue a new lease to Wahlenmaier whose application had been selected second in the simultaneous drawing.

In Superior Oil Company v. Udall, 409 F.2d 1115 (D.C. Cir. 1969), 3/ the Court of Appeals for the District of Columbia held that a high bid by Union Oil Company which had been submitted unsigned was materially deficient and that the Outer Continental Shelf Lands oil and gas lease should be granted in response to the second high bid from Superior Oil Company. Note, however, the language used in that decision:

> The use of the word "authorized" indicates that the Secretary had the discretion in granting leases and is not required to do so. He might for example have rejected all bids on the grounds that none was in the public interest, but if this had been indicated it was a decision which he was obliged to make at that time * * *. It seems clear to us that had Union submitted no bid at all, Superior would have been awarded this lease * * *. (Emphasis added.)
> 421 F.2d at 1121.

It is palpably obvious that the crucial factor in both of these cases was the determination of the Secretary to lease, not his request for bids. The procedures followed in the cases at bar

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3/ In Superior Oil Company v. Hickel, 431 F.2d 1089 (D.C. Cir. 1969), the Court entered this Order per curiam:

"On further consideration of the joint motion of the parties to recall and vacate judgment and the Clerk of the District Court having returned the opinion and certified copy of this Court's judgment, 133 U.S. App. D.C. 198, 409 F.2d 1115, heretofore transmitted to the District Court and it appearing from the aforesaid joint motion that the parties have agreed to a settlement of this case, it is

"Ordered by the Court that this case is hereby remanded to the District Court with instructions to dismiss the case as moot."

comport to the Superior Oil Company declaration that the bid officer has a right to reject all bids if he does so immediately. That is what was done here.

The crucial question is when is the discretion of the Secretary exercised in determining whether or not to lease. In Pease v. Udall, supra, the question arose whether the Mineral Leasing Act of 1920 [MLA], or the Act of March 3, 1927, 25 U.S.C. § 398(a), was the proper act under which to issue a lease for certain lands. Appellant sought by an over-the-counter offer to obtain a noncompetitive lease under the MLA. The Department refused to issue a lease in response to her offer and instead solicited bids under the Act of March 3, 1927, supra. On appeal, appellant argued that the solicitation of bid offers showed the Government's willingness to accept lease offers and the only issue for determination was the proper statute under which to grant a lease. The Court disagreed, noting that the willingness to solicit bid under one statute did not imply a similar willingness to solicit bids under another statute and that the Department had made it clear that it had no desire to lease under the MLA. Thus, even though the Department had decided to lease the land under the Act of March 3, 1927, it was held no bar to a declaration that the land would not be leased under the MLA.

The Isolated Tract Act, 43 U.S.C. § 1171 (1970), provides that "it shall be lawful for the Secretary of the Interior to order into market and sell at public auction * * * any isolated or disconnected tract * * * which, in his judgment, it would be proper to expose for sale * * *." In Willcoxson v. United States, 313 F.2d 884 (D.C. Cir. 1963), cert. denied, 373 U.S. 932 (1963), the Manager of the BLM Land Office, Santa Fe, New Mexico, had ordered the sale of such a tract. After the auction had been concluded but before a cash certificate had issued, the Manager refused to complete the sale because of subsequently acquired information showing that the land was potentially valuable for uranium. The regulation then in effect, 43 CFR 250.5, provided that until the patent issued the Secretary had the right to determine that the land should not be sold at any time. The Court of Appeals affirmed this action.

The Willcoxson case is closely analogous to the OCS situation. The OCSLA is couched in permissive rather than mandatory terms. Neither statute states that the Secretary has the power to reject any or all bids. Both have regulations which do grant such authority. The Court of Appeals found no conflict between the Isolated Tract Act and its implementing regulation, 43 CFR 250.5. We can perceive no justification for reading a different result into the OCSLA.

In Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969), an applicant for an oil and gas lease under the MLA endured nine years of administrative delay and was then denied the lease as a result of

events which postdated his initiation of the administrative process. The Court of Appeals affirmed the action of the Department in denying a lease, noting that there were good and sufficient legal grounds for the Department's actions. In the course of its opinion, the Court adverted to the expenses which the applicant had incurred but found this no basis for ordering the Department to issue a lease. And the court specifically rejected a proposition closely analogous to that pressed in the case at bar, stating that:

> * * * Nor can it be successfully asserted that the Secretary exercises his discretion whether or not to lease when he gives notice for filing and processing applications.

Id. at 667. See also McDade v. Morton, 353 F. Supp. 1006, 1010 (D.D.C. 1973), "The Secretary may determine at any time prior to the acceptance of a lease offer not to lease particular land even if offers for such land were filed long before the determination not to lease or were filed in response to a direct invitation to file." (Emphasis added.) 4/

Thus, the language of the statute and the regulations issued pursuant thereto, the legislative history of OCSLA, and the court decisions interpreting laws similar in purport to that under consideration herein, all support the conclusion that the Secretary of the Interior is possessed of the authority to reject bids even after publication of the lease sale notice and solicitation of the bids. We expressly so find.

This conclusion answers but half of the question, for it is elementary that any discretion must be exercised in a rational manner. The issue thus becomes whether the actions of the Manager in rejecting the bids are supportable under the applicable law and regulations. It is here that we must deal with the varying contentions as to this Board's scope of review in examining the Manager's actions.

In a very real sense the characterization of review authority as either de novo or limited to a search for a rational basis adds little to the resolution of a difficult problem. The grant of authority to this Board is contained in 43 CFR 4.1(3):

> Board of Land Appeals. The Board decides finally for the Department appeals to the head of the Department from decisions rendered by Departmental officials relating to the use and disposition of public lands and

4/ McDade is on appeal, Civil 2437-71, in the Court of Appeals for the District of Columbia Circuit.

> their resources and the use and disposition of mineral resources in certain acquired lands of the United States and in the submerged lands of the Outer Continental Shelf. Special procedures for hearings, appeals and contests in public lands cases are contained in Subpart E of this part.

The Solicitor points to 43 CFR 4.1 and emphasizes the penultimate sentence: "Reference should be made also to the governing laws, substantive regulations and policies of the Department relating to the proceeding." From this the Solicitor argues that the grant of power to make policy determinations is vested in the OCS Manager and the Board has no power to change such policy as may be decided upon. This line of reasoning suffers from a number of infirmities.

As an initial matter it ignores the first sentence of 43 CFR 4.1:

> The Office of Hearings and Appeals, headed by a Director, is an authorized representative of the Secretary for the purpose of hearing, considering and determining, as fully and finally as might the Secretary, matters within the jurisdiction of the Department involving hearings, and appeals and other review functions of the Secretary. (Footnote omitted.)

In matters of adjudication properly before this Board its authority is coextensive with that of the Secretary. To the extent that a question presents legal issues amenable to the adjudicatory process this Board has full powers including, without limitation, the right of de novo consideration.

Moreover, the Solicitor's argument obscures an essential point. The issue before this Board is not one of a policy character but of a legal nature. We are not asked to review the policy implicit in the Manager's actions, viz., the attempt to recover a fair return for the grant of leases. Rather our review is sought to determine two completely discrete questions: 1) whether the criteria formulated for use by the Manager are such that would rationally achieve the desired ends; and 2) whether those criteria were correctly applied in the individual cases before us. These are the parameters of our concern. Within these limits, however, our review may not be straight-jacketed into a position that we must accept the Manager's actions unless clearly erroneous. Rather, we have the obligation to examine for ourselves the criteria utilized and the manner of their application. If the criteria comport with the policy objectives they may be affirmed, if they do not, this Board has the duty to reject them. It is within this framework that the issues in this case will be examined.

While, as we have said, the Board has the authority to review, de novo, the rejection of these bids, it need not in every instance exercise its full authority. In many matters which depend for their resolution upon the evaluation of technical data, the Secretary (and this Board and its predecessors) has not examined de novo the conclusions reached by his technical experts. He has restricted his review to a determination of whether there has been a clear showing that the initial decision was erroneous or put more positively, he has upheld the decision if it is not arbitrary or capricious and is supported by competent evidence. E.g., Jack C. Bradley, Jr., 11 IBLA 294 (1973), T. D. Skelton, 9 IBLA 322 (1973); William J. Colman, 9 IBLA 15 (1973). Only upon a clear showing that the determination of the Geological Survey was improperly made will the Secretary act to disturb the determination. James C. Goodwin 9 IBLA 139 (1973), see Clear Creek Inn Corporation, 7 IBLA 200 (1972).

The criteria utilized in determining the acceptability of high bids were the subject of extensive briefing to this Board. There was little argument as to the nature of criteria applied, 5/ though the parties argued at length the efficacy of the tests imposed. Since an understanding of these criteria is essential to a comprehension of the issues involved herein, they will be set out at some length.

The procedures followed in the analysis of bids were the result of agreements between the Bureau of Land Management [BLM] and the Geological Survey [Survey]. This agreement provided for a system of consultation between BLM economists and Survey experts. As an initial step, after the announcement of the sale was made, reliability categories were established to indicate the adequacy of available geophysical, geological and engineering data. Under revised criteria there were three evaluation categories with six different levels of evaluation reliability. The three categories were: (1) Proven or semi-proven acreage ("Drainage") method; (2) Wildcat acreage method; and (3) Rank wildcat acreage method. Reliability ratings varied from: "A. Drainage and has excellent control, good data with little (relative) uncertainty with regard to exploratory value," to "F. Unknown hydrocarbon potential or no well control

5/ The discussion of the actual process of bid analysis contained herein differs considerably from that found in Tipperary Land & Exploration Corp., supra; and Antoine "Fats" Domino, supra. Information made available to the Board subsequent to those decisions indicates that the Manager did not simply apply a three-prong test as those decisions state, but rather went into the more elaborate system of review discussed, infra. In light of this we have reexamined, sua sponte, those two decisions but find no reason to change the results reached.

sufficient to predict sands; structure unknown or geologic risk undeterminable." Three of the four tracts involved in this appeal had 2-D ratings (La. 2220, La. 2214, La. 2181); one tract had a 1-B rating (La. 2194). Those tracts with 2-D ratings were thus wildcat acreage 6/ in which there was "Good knowledge of structure configuration and size. Well control adequate to predict gross sand conditions and depth; fair to good knowledge of geologic risk." Tract La. 2194 was proven or semi-proven acreage 7/ in which there was: "Drainage with good knowledge and good control (may be seismic), some production data; part of evaluation has some doubt especially if the exploratory portion is large."

After this data had been assembled the Survey analyzed all tracts and placed a value on each. The agreement provided for a period of close deliberations between Survey and BLM to evaluate and refine the values arrived at up until the sale date.

After the sale, further meetings ensued encompassing matters such as a determination of the authority of agents who signed high bids, a check of the sufficiency of remittances as well as an analysis of the bids made. Under the revised post-sale bid evaluation criteria four categories were established. Tracts La. 2220 and La. 2214 were placed in category III; tracts La. 2181 and La. 2194 were placed in category IV. Category III provided:

> Where tract or prospect receives a competitive number of bids for the sale involved and the high bid fails below the pre-sale valuation.

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6/ The wildcat acreage method was defined as follows: "Unleased tract is located on a structural feature which has not previously produced oil or gas, but which is in close proximity to other producing structures. Projection of these nearby reservoirs and sand conditions into the leasing tract are possible through the use of geophysics, stratigraphy, and paleontology. It is also possible to obtain a reserve estimate based on reserve calculations performed in a nearby comparable producing structure. Values obtained are adjusted using the most appropriate risk factor."

7/ The proven or semi-proven acreage ("Drainage") method was defined as follows:

"Leasing tract occupies part of a drilled structure. Geologic and engineering data adequate to prepare structure and net pay maps, to make standard reserve calculations, and to perform profitability analyses utilizing appropriate rate or return and discount factors. Any production found on unleased acreage would be considered a field extension."

Bids in this category could be accepted or rejected depending on a careful analysis of the following criteria:

Primary

A. Quality of geologic and engineering data.

B. % deviation from pre-sale evaluation.

C. Total of high bids on prospect.

D. Degree of competition on tract.

E. Need to develop additional reserves in the immediate area.

F. Whether actual drainage is occurring.

Secondary

A. Tract history.

B. Bidding pattern of high bidder.

C. Degree of competition at sale.

D. Bids of adjoining owners.

E. Bids for adjacent tracts in recent sales.

F. Fairway conflicts.

Usually, major criteria would have to be equally positive and negative before minor criteria would be a factor.

Category IV provided:

Where tract or prospect receives a limited number of bids for the sale involved and high bid falls below pre-sale evaluation.

Normally, most bids in this category would be considered for rejection. Other criteria to consider would be:

Primary

A. Quality of geologic and engineering data.

B. % deviation from pre-sale evaluation.

C. Number bids and total money received for entire prospect.

D. Need to develop additional reserves in the area.

E. Whether actual drainage is occurring.

Secondary

A. Tract history.

B. Bid of adjoining owner (if any).

C. Bidding pattern of high bidder.

D. Need for geologic information in new area.

Most, or all, of these factors, both primary and secondary, would have to be positive before acceptance would be considered.

Thus far we have provided a simple narrative of the general modus operandi as laid out in various documents submitted to the Board. At this point, however, it is necessary to make an analysis of a more substantive nature. It is clear from the record that two factors were largely determinative of category placement--the dollar amount of the bid as it related to the presale evaluation and the presence or absence of a "competitive" number of bids. This Board, in Tipperary Land & Exploration Corp., supra, declared: "Competitive bidding does not require that more than one bid be submitted before the authorized officer, but only that the officer, by due advertisement, give opportunity for everyone to bid." 79 I.D. at 598, 7 IBLA at 275. Absent a charge of fraud or collusion the number of those who bid on a single tract cannot serve as a ground for rejection of a bid, nor as a criterion for placement in one category vis-a-vis another.

As regards the presale evaluation, appellants argued at length that the Government estimates of tract value were so consistently disparate from those of the high bidders that they cannot rationally serve as a ground for the rejection of a bid. Simply stated their position is that true value is determined by the highest bid; such a bid represents the value at which a willing buyer and a willing seller will consummate a deal. The short answer to this argument is that the present seller is unwilling. Beyond that, even if one

accepts the implicit assumption that the evaluations of the Government are no more rational (or irrational) than those of the companies, the fact remains that the Government has not only the right, but the duty to obtain what it considers full value for the leased lands. Both BLM and the bidders used essentially the same information in their calculations on which the presale evaluation or the bid was based. The conclusions reached by the bidders and BLM varied widely. In many cases the high bid was far in excess of the unsuccessful ones. [Review of all the bidding at all OCS sales shows that in 35% of the tracts, the high did was more than double the second high bid.] Yet all the bids were presumably based upon the evaluations of competent and trained personnel. That they reached such disparate results only demonstrates that evaluation of prospective oil lands is still an art as well as a science. [And one must realize that there are different emphases in the approaches of the Government to a presale value and of the bidder to the amount which it deems adequate to surmount all opposing bids.] We find that the use by the Government of presale evaluation estimates to determine whether or not bids represent a fair return to the Government complies with the law, regulations and Departmental policies.

Regarding individual components within the categories, it is clear from our above discussion that "Degree of competition on tract," Primary criterion D in category III is an erroneous standard and cannot be utilized. The other Primary criteria in category III do, however, relate to legitimate factors. Descending to the Secondary criteria in category III an advertence towards the bidding pattern of high bidder is mandated. The Solicitor, in his brief, explained the relevance of these criteria:

> This factor helped the Manager decide if a high bid in fact represented a fair return for a tract. The factor was of little or no value to the Manager if the bidding entity whose bid was high on a given tract had bid on only one or two tracts in the entire sale. However, for an entity which bid frequently during a sale it provided information on where his bids fell overall in relation to the bids of his competitors. If the entity's bids were consistently low in relation to other bids, and yet on one tract the entity's bid was the high bid, the bidding performance of that entity might suggest to the Manager that a fair return would not be realized if the high bid were accepted. Such a bidding pattern would indicate to the Manager that the high bid would have to be scrutinized to determine if it represented a fair return. If the bidding entity under review had bid frequently and its bids were consistently close to the high bids, the Manager might have more confidence that, for a tract on which that entity's bid was high, a fair return

> would be received. The entity's performance would indicate that it was not trying to acquire a lease by consistently bidding low, hoping that its competitors, for one reason or another, would choose to expose little or no money on some tracts. (Appellee's Answer at 25 n.12.)

We fail to see the relevance of the high bidder's bidding pattern on all tracts to the value of the tract under scrutiny. If the Survey has indeed carefully considered all factors in arriving at its presale evaluation the possibility that the bidder, owing to some ostensive misconception of the value of most tracts available for leasing, has underbid a particular tract is hardly probative of anything. A marksman might miss a target nine times in a row and then hit a bull's-eye. One might conclude from this that the tenth shot was a lucky happenstance, but one would scarcely surmise that the bull's-eye was off- center.

The real weakness of this test is readily apparent if one compares the Government's presale estimates to the high bids received. The Government had a bidding pattern of roughly 15%. Are we to reject the Government's estimates as inadequate since they consistently undervalued the tracts? The bidding pattern test proves nothing as to the value of a specific tract under analysis and cannot serve as the predicate for the rejection or acceptance of a high bid.

Similarly, we find that Secondary criterion C, "Degree of competition at sale," is subject to the same infirmities as beset Primary criterion D, and we reject it as a relevant factor in the determination of the acceptability of high bids. For the reasons we have discussed above, we also reject that part of Primary criterion C, of category IV, relating to the number of bids received for the entire prospect, as well as Secondary criterion C, bidding pattern of high bidder.

We turn now to the application of these standards in the cases at bar. Initially, appellants contend that their bids were improperly placed in categories III and IV. They point to categories I and II and argue that their bids should properly have been included thereunder. This point is not academic, since placement in category I would result in the acceptance of the bid. Category I provides:

> Where tract or prospect receives a competitive number of bids for the sale involved and the high bid(s) exceed(s) the presale evaluation.
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> All bids in this category would be accepted.

Appellants, at the oral argument, pointed particularly at the word "prospect." The Manager, they argue, ignored this word and

determined bid placement solely on the basis of the relationship of the high bid for a tract to the presale evaluation for that tract. The language itself is clearly amenable of the interpretation which appellants have advanced. Certainly the presence of the "s" in parentheses is indicative of an intention to treat tract and prospect as discrete entities, since there could only be one high bid on a given tract, whereas there could be a number of high bids on a prospect. But when the criteria for placement in category I are compared to the criteria for placement in categories II, III, and IV, ambiguities develop. First of all, all three speak of "tract or prospect" but none contain the "s" in parentheses. Furthermore, categories III and IV both have as a Primary criterion the total of high bids on the prospect. If the total of the high bids on the prospect was to be a definitive classification as contested by appellants, the use of the total of high bids as a criterion within a category would be a redundancy.

We think the ambiguities implicit in the criteria are best resolved by a reliance on the interpretation of those who both composed and implemented them. See Superior Oil Co., 12 IBLA 212 (1973); Amoco Production Co., 10 IBLA 215 (1973). It is obvious from the documents before us that the BLM interpreted the phrase "tract or prospect" as in fact only embracing the tract concept. Indeed, until oral argument no party to the appeal advanced any other interpretation. In view of this consistent course of action we find that the phrase "tract or prospect," as used as the basis for category placement, is properly read as simply "tract." Inasmuch as this is the interpretation universally applied by the Manager, no appellant may properly complain of surprise or of partial treatment.

Since we have previously indicated that category placement based on the degree of competition on the tract was erroneous we have reviewed appellants' bids on the basis of category III criteria.

Bids in this category could be accepted depending upon a careful analysis of certain criteria, supra. We have reviewed the rejected high bids and come to the following conclusions.

As regards Exxon's bid of $511,000 for tract 2220, we note that the tract was given an evaluation reliability of 2 D. The Geological Survey recommended rejection of the bid on its "belief" that the potential of the tract is greater than indicated by the Exxon bid of $204 per acre. Exxon's bid was only 28% of the presale evaluation for this tract, but Exxon's bids for all five tracts comprising this prospect totaled 220% of the presale evaluation, or an aggregate bid of $21.1 million against a presale evaluation total of $9.6 million. The high bid for one tract in this prospect was 2.2 times the presale

evaluation, and was accepted by the Government. It follows that Exxon's bids for the total prospect would have been accepted if the prospect were offered as a unit. It is true that the total high bids for this prospect were nearly $50.0 million, but as stated in the government's brief:

> Because of the uncertainties in accurately predicting the location and extent of hydrocarbon reserves within a geologic prospect, this factor total of high bids on prospect required the Manager to look at the total of high bids on the entire prospect as well as the high bid on an individual tract within a prospect. If the total of high bids on the prospect exceeded its estimated value as determined by USGS, an otherwise inadequate high bid on one tract might represent only a difference in allocation of the reserves among the tracts within the prospect. Acceptance of such a bid would not preclude the United States from realizing a fair return on the reserves in the entire prospect. (Emphasis added.) (Appellee's answer at 31).

It thus is evident that the Exxon bids for the total prospect exceeded the total presale evaluation, and the total high bids exceeded the presale evaluation by 5 times. Within the primary criteria for category III, the Exxon bid should have been accepted. We reverse the Manager's decision of rejection for the high bid on Tract 2220.

Applying this same line of reasoning to the rejected bids of Forest for Tract 2181 and of Conoco for Tract 2214, we find no error in the Manager's decisions. Each of these rejected bids was for one of a two-tract prospect. The total of Forest's bids was $2.56 million against a presale evaluation of $3.04 million, or only 84%, and the rejected bid was for only 80% of the presale evaluation for the tract. Similarly, Conoco's bids totaled $3.82 million against a presale evaluation of $6.98 million, or only 55%, and the rejected bid was only 30% of the presale evaluation for the tract. Notwithstanding that the total of the high bids for each prospect attained more than 130% of the presale evaluation for the prospect, it was proper for the Manager to reject these bids, even in the face of no recommendation from the Geological Survey that they be rejected. To hold that where the total high bids for a prospect exceed the total presale evaluation for the prospect each high bid must be accepted for its tract, regardless of its relationship to the presale evaluation for the tract, could lead into a ridiculous situation of compelling the government to accept a bid of merely $1,000 for a tract having a presale evaluation of $361,000, where an adjoining tract in the same prospect having a minimum presale evaluation (no value) received a high bid of $12.3

million, the situation that prevailed in the prospect including tracts 2149-2152. 8/ Where the total bids of a bidding entity for a prospect exceed the total presale evaluation for the prospect, a high bid for a single tract which does not equal the presale evaluation for that tract may be accepted without defeating the public interest.

Tract 2194 was a "drainage tract" for which Forest's high bid of $1.03 million was only 35% of the presale evaluation. Geological Survey recommended rejection of this bid. The evaluation was based on subsurface geological control from wells drilled in the area. Offset wells are productive from sands presumed to extend into this tract. It was proper, therefore, for the Manager to reject this bid.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision relating to Exxon Co., U.S.A., is reversed, and the decisions relating to Forest Oil Corporation and Continental Oil Company are affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Martin Ritvo
Administrative Judge

8/ Contrary to Judge Fishman's intimations, we do not view the presale evaluations established by the Geological Survey as "holy writ." Nor do we see them as "apocrypha." Certainly some deference should be made to the expertise of the Survey scientists, and such expertise clearly extends to a valuation of their own technical findings. To maintain that the expertise of the Geological Survey is limited to geologic matters only, and does not embrace the translation of geologic data into dollars is fatuous. Intrinsic in the evaluation of technical data is valuation of the results.

ADMINISTRATIVE JUDGE FISHMAN
CONCURRING IN PART AND DISSENTING IN PART:

I agree with the main decision to the extent that it holds that the Department has authority to reject high bids for OCS oil and gas leases, based upon the inadequacy of the bids, if such rejection was premised rationally on facts. Cf. United States v. Charles Maher, 5 IBLA 209, 79 I.D. 109 (1972). I agree also that the Board has authority to consider de novo the record and to make its own determination whether a high bid should be accepted.

However, I agree with appellants that the Government estimates of tract value were so consistently disparate from those of the high bidders as manifested by their bids that such estimates cannot serve rationally as a ground for the rejection of the bids. In my judgment the much vaunted expertise of the agencies concerned in arriving at estimates of resource values did not manifest itself in the cases at bar.

Analysis of the briefs submitted by the parties and participation as a hearing officer in the oral arguments impelled me to the belief that all appellants were entitled to the oil and gas leases they seek as of the time of oral argument.

The crucial test to be applied is whether the rejected high bids meet the requirement of fair market value. In essence, it is a problem of appraisal. The point need not be belabored that the best evidence of fair market value is the value fixed in the marketplace between the buyer and seller, both of whom are informed and neither of whom is acting under compulsion. All other methods of appraisal are merely means, admittedly imperfect, to ascertain that value fixed in the marketplace. For example, the income producing ability of a property is simply a device to endeavor to ascertain what the marketplace value would be. There is no doubt that the sale in issue was widely advertised and attracted many responsible bidders. None of the bids at issue were token bids. The basic measurement and linchpin for determining the acceptability of the bids employed by the Manager were the presale evaluations, fixed by the Geological Survey and Bureau of Land Management. Because of what I regard is the basic unreliability of those presale evaluations I shall not dwell upon the additional criteria employed.

The bid of Kerr McGee, et al. for Tract 2124, Block 571, West Cameron Area, South Addition, Louisiana OCS-2016, although not involved in this decision, exemplifies the inadequacies of presale evaluations.

The bid in issue was $711,150, followed by seven other bids. The next highest bids were $607,850 and $607,600.

The decision of June 5, 1972, 6 IBLA 108, to which a petition for reconsideration is directed, readily concedes that the high bids for the tracts adjoining and cornering the tract in issue, ranged from 51 percent to 730 percent of the risk-free values set by the Government.

This range of disparity is sufficient to demonstrate, in and of itself, the lack of any consistent pattern and, indeed, the absence of any rational criteria for the acceptance and rejection of bids in that area.

On tract 2123, which immediately borders tract 2124, the high bid was seven times the risk-free value and 30 times the presale evaluation.

Presumably, the purpose of the evaluation of the tracts is to be certain that the Federal Government receives fair market value for its resources, in keeping with the enunciation of Congressional policy expressed in 31 U.S.C. § 48(a) (1970).

With respect to tract 2124, we have at least six bids by informed bidders. Against the factor, we have the Survey's statement that "Our technical people * * * feel the tracts have more potential than indicated by the high bid received." This conclusion is reached despite the fact that "[b]efore the sale, the Geological Survey had characterized Tract 2124 (ad the adjacent tracts) as being rank wildcat acreage remote from producing areas."

Although I have no doubts as to the capabilities of the Geological Survey as to geologic matters the translation of geologic data into dollars as to tract 2124 does not appear to be the product of "experts." Skill in economic matters is not an ubiquitous concomitant of knowledge of geology, as is illustrated below. Evaluation of geologic data is within the competence of the Geological Survey as to matters of geology. Economic evaluation is a discrete discipline and expertise in that discipline is not manifested by the presale evaluations.

A study of OCS sales over the years would impel the conclusion that presale evaluations for tracts are often remote from reality. One of the classics is the tract 1/, to which the "experts" assigned a presale evaluation of $43,000,000, but which received no bids at that sale, and subsequently sold for $661,000. The cases before us do not arise under the Administrative Procedure Act, and the Board is not limited to the facts of record in the case. In short, we can, and should, take cognizance of the modus operandi and degree of asserted expertise of those charged with the responsibility for making presale evaluations and acceptance or rejection of high bids despite the fact that this data is not of record in the files pertaining to these cases.

Another example of the fallacy of relying on presale evaluations is set forth in the Washington Post of March 27, 1974, at page A13, as follows:

> Last December the Interior Department appraised 35 offshore oil and gas tracts in the Gulf of Mexico at an identical $144,000 each. But one lease went for $91,617,000 or 637 times as much. Another went for $76,827,000, or 533 times as much.

While the foregoing, standing alone, might impel the conclusion that presale evaluations are invariably low, the value placed upon the South Timbalier tract, cited above, vitiates that conclusion. In essence, it is my view that presale evaluations for OCS leases are simply not a reliable factor upon which to reject high bids.

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1/ Tract No. 1561, block 136, South Timbalier, offshore Louisiana. The tract was offered at a sale on October 18, 1966. No bids were received therefor. The tract was subsequently deemed to be worth on the order of $700,000 to $1,500,000. The tract was bid in for $661,000 at the June 13, 1967, sale by Humble and Gulf Oil. They relinquished the lease on June 29, 1971.

Concededly, the 1966 sale represented one of the earliest ventures into presale evaluations by the Geological Survey and the Bureau of Land Management. However, in the light of the fact that the bids for tracts adjoining the tract 2124 ranged from 51 percent to 730 percent of the risk-free values set by the Government, it is not entirely clear that the art of presale evaluations has passed beyond a primitive stage.

Although the majority pay due homage to the review authority of this Board, it seemingly utilizes the "arbitrary or capricious" standard.

The use of that standard deprives the Secretary, and his surrogates, this Board, of giving de novo consideration to appellate matters. This procedure vests in initial adjudicatory officers an incredible amount of authority and simultaneously constitutes a renunciation of the full extent of Secretarial powers. As far as I am aware, no other administrative appellate body has so abnegated its responsibilities.

The Supreme Court has recognized that an agency should exercise its appellate powers, even when the subordinate adjudicatory officer's decision is not "clearly erroneous." In F.C.C. v. Allentown Broadcasting Co., 349 U.S. 358 (1955), the court stated:

> The Court of Appeals' conclusion of error as to evasiveness relies largely on its understanding that the Examiner's finding based on demeanor of a witness are not to be overruled by a Board without a "very substantial preponderance in the testimony as recorded," citing Labor Board v. Universal Camera Corp., 190 F.2d 429, 430. We think this attitude goes too far. It seems to adopt for examiners of administrative agencies the "clearly erroneous" rule of the Fed. Rules C iv. Proc., 52(a), applicable to courts. In Universal Camera Corp. v. Labor Board, 340 U.S. 474, 492, we said, as to the Labor Management Relations Act hearings:
>
> > "Section 10(c) of the Labor Management Relations Act provides that `If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact * * *' 61 Stat. 147, 29 U.S.C. (Supp. III) § 160(c). The responsibi-lity for decision thus placed on the Board is wholly inconsistent with the notion that it has power to reverse an examiner's findings only when they are `clearly erroneous.' Such a limitation would make so drastic a departure from prior administrative practice that explicitness would be required." [Emphasis supplied]
>
> 349 U.S. at 364

The standard of "clearly erroneous" is closely akin to that of "arbitrary and capricious." Thus the court recognized that the use of such criteria "* * * would make so drastic a departure from prior administrative practice that explicitness [in the operative statute] would be required."

What seems implicit in the majority's opinion is the view that since the determination is committed to agency discretion it is unreviewable by the courts. Although it is true that many decisions hew to that line (e.g. Lewis v. Hickel, 427 F.2d 673 (10th Cir. 1970)), there are many decisions where the exercise of agency discretion is tested against the "arbitrary, capricious * * * abuse of discretion * * *" criteria embodied in 5 U.S.C. § 706 (1970). See LaRue v. Udall, 324 F.2d 428 (D.C. Cir. 1963), cert. denied, 376 U.S. 907 (1964). United States v. Shimer, 367 U.S. 374 (1961) recognizes that where the fact finding is plainly wrong, it cannot stand:

> More than a half-century ago this Court declared that "where Congress has committed to the head of a department certain duties requiring the exercise of judgment and discretion, his action thereon, whether it involve questions of law or fact, will not be received by the courts, unless he has exceeded his authority or this court should be of opinion that his action was clearly wrong." Bates & Guild Co. v. Payne, 194 U.S. 106, 108-109.

367 U.S. at 381, 382.

But Mr. Justice Brandeis' concurring opinion in St. Joseph Stock Yards v. United States, 298 U.S. 38 (1935) puts that doctrine into focus:

> First. An order of the Secretary may, of course, be set aside for violation of the due process clause by prescribing rates which, on the facts found, are confiscatory. For the order of an administrative tribunal may be set aside for any error of law, substantive or procedural. Interstate Commerce Comm'n v. Union Pacific R. Co., 222 U.S. 541, 547. Moreover, where what purports to be a finding upon a question of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter, the Court will, in order to decide the legal question, examine the entire record, including the evidence if necessary, as

> it does in cases coming from the highest court of a State. * * * It may set aside an order for lack of findings necessary to support it, Florida v. United States, 282 U.S. 194, 212-215; or because findings we re made without evidence to support them, New England Divisions Case, 261 U.S. 184, 203; Chicago Junction Case, 264 U.S. 258, 262- 266; or because the evidence was such "that it was impossible for a fair-minded board to come to the result which was reached." San Diego Land & Town Co. v. Jasper, 189 U.S. 439, 442; or because the order was based on evidence not legally cognizable, United States v. Abilene & Southern Ry., 265 U.S. 274, 286-290; or because facts and circumstances which ought to have been considered were excluded from consideration, Interstate Commerce Comm'n v. Northern Pacific Ry. 216 U.S. 538, 544-545; Northern Pacific Ry. v. Department of Public Works, 268 U.S. 39, 44; or because facts and circumstances were considered which could not legally influence the conclusion, Interstate Commerce Comm'n v. Diffenbaugh, 223 U.S. 42, 46-47; Florida East Coast Ry. v. United States, 234 U.S. 167, 187; or because it applied a rule thought wrong for determining the value of property, St. Louis & O'Fallon Ry. v. United States, 279 U.S. 461.
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> 298 U.S. at 74-75.

In B & O R. Co. v. Aberdeen R.R. Co., 393 U.S. 87 (1968), the absence f substantial factual data in the record was noted as follows:

> We agree with the District Court that there is no substantial evidence that territorial average costs are necessarily the same as the comparative costs incurred in handling North-South freight traffic. If we were to reverse the District Court, we would in effect be saying that the expertise of the Commission is so great that when it says that average territorial costs fairly represent the costs of North-South traffic, the controversy is at an end, even though the record does not reveal what the nature of that North-South traffic is. The requirement for administrative decisions based on substantial evidence and reasoned findings--which alone make effective judicial review possible--would become lost in the haze of so-called expertise. Administrative

> expertise would then be on its way to becoming "a monster which rules with no practical limits on its discretion." Burlington Truck Lines v. United States, 371 U.S. 156, 167. That is impermissible under the Administrative Procedure Act.

The vice of the cases at bar is the fact that the record is completely bereft of any evidence upon which an informed judgment could be predicated as to the merits of the resource values, i.e., the presale evaluations, established by the officials below.

This brings to the fore the question of why such a record was submitted to the Board.

43 CFR 4.24(a)(4) provides that:

> In any case, no decision on appeal or after a hearing shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or hearing.

The resource estimate value of each OCS tract offered for leasing is arrived at by personnel of the Bureau of Land Management and the Geological Survey acting in concert. The Geological Survey's data often includes "trade secrets and commercial or financial information obtained from a person and privileged or confidential" and "geological and geophysical information and data, including maps, concerning wells." These are exceptions to the Freedom of Information Act, 5 U.S.C. § 552 (1970).

The Geological Survey does obtain from industry geological and geophysical data on a confidential basis, which is helpful, if not essential, to its operations. Understandably, it wishes to protect its sources of data. However, the net effect of 43 CFR 4.24(a)(4), and of the Geological Survey's desire to protect its sources of data is to tend to hinder this Board from making an informed determination of the merits of a case such a the one at bar. The majority treats a presale evaluation as holy writ. The Geological Survey wisely has recognized the inadequacy of the approach taken in the cases at bar and has adopted a methodology embracing a high value, a most probable value, and a minimum value, all of which are based upon variations in input factors.

It seems to me that to give the Board that opportunity, and, more meaningfully, to give appellants the benefit of an informed review of their cases by the Board, 43 CFR 4.24(a)(4) should be amended to provide that where an appeal involves an OCS or onshore mineral bid rejection, data may be utilized by the Board without its becoming subject to inspection by the appellant.

It is my view that the lack of correlation between the estimated values and the bidding pattern, particularly as to the adjacent and cornering tracts to tract 2124, involved in the same sale, establishes the lack of a rational basis for the estimated value reached for that tract. The several informed bidders' judgment is a far better indicium of the fair market value of the tract than the asserted "expertise" demonstrated in the instant case. While concededly the bids at issue did not result in "sales," the situation is similar to the stock market where no trades take place in a particular day as to a particular stock. The amount bid for that stock in those circumstances is regarded as an indicium of value. The same rationale applies here.

Finally, the primary object of outer continental shelf leasing is not revenues, but rather "to meet the urgent need for further exploration and development of the oil and gas deposits of the submerged lands of the Outer Continental Shelf * * *." Act of August 7, 1953, § 8, 67 Stat. 468; 43 U.S.C. § 1337(a) (1970). This Congressional pronouncement of policy in 1953 was prescient in its recognition of the dire hydrocarbon energy crisis 2/ which now faces the Nation. In that context, the statement in the decision of June 5, 1972, 6 IBLA 108, at 112 "* * * that to accept it [the bid] would not be in the public interest" is so discordant with the realities as to be, in my judgment, arbitrary and capricious.

Secretary Morton placed the matter 3/ into focus as follows:

> Sixty-six per cent of all the revenues that have been generated on the outer continental shelves have gone to government--either state or federal. So we have had a money-oriented policy much more than an oil-oriented policy as far as the government has been concerned.
>
> For a long time the supply of oil was not a problem. We had cheap oil dammed up at the national

2/ "The truth of the matter is that we have had a crude oil deficit in this country since 1967 which was the very last year our spare productive capacity exceeded the volume of oil imports.

* * * * * * * *

Accelerated oil and gas leasing, not just of Outer Continental Shelf lands, but also onshore public lands is probably the most significant remedy available."

Remarks of Hollis Dole, Former Assistant Secretary--Mineral Resources, before the National Energy Forum, Washington, D.C., September 24, 1971.

3/ Washington Post of March 24, 1974 at page A 11.

boundary through the oil import policy and so on. So the leasing system worked out so that government got an awful lot of money for dry holes.

But now, with the shortage of oil, the whole ball game has changed. We have go to go to an oil-oriented policy rather than a money-oriented policy because w e are short of oil.

I would grant the leases sought by all appellants in the cases at bar.

Frederick Fishman
Administrative Judge

15 IBLA 371